

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 24

Introduced by Assembly Member Nazarian

December 1, 2014

An act to amend Section 5374 of, and to add Section 5444 to, the Public Utilities Code, and to amend Section 1808.1 of the Vehicle Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 24, as amended, Nazarian. Transportation network companies: public safety requirements.

The Passenger Charter-party Carriers' Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission, and imposes various other requirements. *Existing law requires, as a condition to obtaining a certificate or permit, that the applicant, among other things, participate in a program to regularly check the driving records of all vehicle operators and provide a mandatory controlled substance and alcohol testing certification program.* A violation of the act is generally a misdemeanor. Existing law defines a transportation network company as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled platform to connect passengers with drivers using their personal vehicles.

This bill would prohibit the commission from issuing or renewing a permit or certificate to a charter-party carrier of passengers unless the applicant, in addition to existing requirements, participates in the Department of Motor Vehicles pull-notice system and provides for mandatory Department of Justice background checks of every driver, except as specified, who is either employed by, or under contract to, the applicant. ~~system. This bill would specifically require a transportation network company to comply with these provisions: this provision and to provide for a mandatory controlled substance and alcohol testing certification program.~~ The bill would also require a transportation network company to register any vehicle used in the transportation of passengers for compensation with the commission and display the an identifying decal issued by the commission on the vehicle.

~~The bill would require a driver of a charter-party carrier of passengers or a transportation network company to submit to the Department of Justice fingerprint images and related information for the purpose of obtaining information as to the existence and content of state convictions and state arrests, as specified, and would require the department to charge a fee sufficient to cover the cost of processing the request described in these provisions.~~

The bill would require that drivers hired or initially retained by either a charter-party carrier of passengers or a transportation network company on or after January 1, 2016, be subject to background checks and mandatory drug and alcohol testing prior to employment or retention and that drivers hired or initially retained before January 1, 2016, complete a background check and drug and alcohol test before January 1, 2017.

Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5374 of the Public Utilities Code is
2 amended to read:

3 5374. (a) (1) Before a permit or certificate is issued or
4 renewed, the commission shall require the applicant to establish
5 reasonable fitness and financial responsibility to initiate and
6 conduct or continue to conduct the proposed or existing
7 transportation services. The commission shall not issue or renew
8 a permit or certificate pursuant to this chapter unless the applicant
9 meets all of the following requirements:

10 (A) It is financially and organizationally capable of conducting
11 an operation that complies with the rules and regulations of the
12 Department of the California Highway Patrol governing highway
13 safety.

14 (B) It is committed to observing the hours of service regulations
15 of state and, where applicable, federal law, for all persons, whether
16 employees or subcarriers, operating vehicles in transportation for
17 compensation under the certificate.

18 (C) It has a preventive maintenance program in effect for its
19 vehicles used in transportation for compensation that conforms to
20 regulations of the Department of the California Highway Patrol
21 in Title 13 of the California Code of Regulations.

22 (D) It participates in the pull-notice system pursuant to Section
23 1808.1 of the Vehicle Code to regularly check the driving records
24 of all persons, whether employees or subcarriers, operating vehicles
25 used in transportation for compensation.

26 (E) It has a safety education and training program in effect for
27 all employees or subcarriers operating vehicles used in
28 transportation for compensation.

29 (F) It will maintain its vehicles used in transportation for
30 compensation in a safe operating condition and in compliance with
31 the Vehicle Code and with regulations contained in Title 13 of the
32 California Code of Regulations relative to motor vehicle safety.

33 (G) It has filed with the commission the certificate of workers'
34 compensation insurance coverage or statement required by Section
35 5378.1.

36 (H) It has provided the commission an address of an office or
37 terminal where documents supporting the factual matters specified
38 in the showing required by this subdivision may be inspected by

1 the commission and the Department of the California Highway
2 Patrol.

3 (I) It provides for a mandatory controlled substance and alcohol
4 testing certification program as adopted by the commission
5 pursuant to Section 1032.1.

6 (J) Subparagraphs (C), (F), and (H) do not apply to a
7 charter-party carrier of passengers engaged in the provision of a
8 hired driver service when a rented motor vehicle is being operated
9 by the hired driver.

10 ~~(K) It provides for mandatory Department of Justice criminal~~
11 ~~background checks to check the criminal history of any driver who~~
12 ~~is either under contract to, or employed by, the applicant to operate~~
13 ~~a vehicle used in transportation for compensation pursuant to the~~
14 ~~following:~~

15 ~~(i) A driver, as defined in Section 305 of the Vehicle Code, of~~
16 ~~a charter-party carrier, as defined in Section 5360, shall submit to~~
17 ~~the Department of Justice fingerprint images and related~~
18 ~~information required by the department for the purpose of obtaining~~
19 ~~information as to the existence and content of state convictions~~
20 ~~and state arrests and also information as to the existence and~~
21 ~~content of a record of a state arrest for which the department~~
22 ~~establishes that the person is free on bail or on his or her own~~
23 ~~recognizance pending trial or appeal.~~

24 ~~(ii) The department shall provide a state response to the~~
25 ~~charter-party carrier pursuant to paragraph (1) of subdivision (p)~~
26 ~~of Section 11105 of the Penal Code.~~

27 ~~(iii) The charter-party carrier shall request from the Department~~
28 ~~of Justice subsequent notification service, as provided pursuant to~~
29 ~~Section 11105.2 of the Penal Code, for persons described in clause~~
30 ~~(i).~~

31 ~~(iv) The department shall charge a fee sufficient to cover the~~
32 ~~cost of processing the request described in this subparagraph.~~

33 ~~(v) A driver shall be denied employment or have his or her~~
34 ~~contract voided if he or she is required by any law to register as a~~
35 ~~sex offender or has been convicted of any felony, within a~~
36 ~~seven-year period from the date of his or her application, involving~~
37 ~~any of the following: any type of sexual offense; the manufacture,~~
38 ~~possession for sale, transportation, or distribution of narcotics;~~
39 ~~controlled substances, or addictive or dangerous drugs; force,~~
40 ~~violence, threat, or intimidation against persons; kidnapping;~~

1 forgery, fraud, larceny, extortion, burglary, robbery, or theft; credit
2 card fraud; possession of a firearm or dangerous weapon; resisting
3 or obstructing a peace officer, public officer, or emergency medical
4 technician; or use of another vehicle for hire in the commission of
5 a felony. Equivalent out-of-state violations shall be considered.

6 ~~(L) Subparagraph (K) shall not apply with respect to a driver~~
7 ~~who is required to undergo a criminal background check pursuant~~
8 ~~to Section 33192 or 45125.1 of the Education Code, while the~~
9 ~~driver remains employed by the employer for whom the criminal~~
10 ~~background check was performed.~~

11 ~~(2) Drivers hired or initially retained by a charter-party carrier~~
12 ~~of passengers on or after January 1, 2016, shall be subject to~~
13 ~~background checks and mandatory drug and alcohol testing prior~~
14 ~~to employment or retention. Drivers hired or initially retained~~
15 ~~before January 1, 2016, shall complete a background check and~~
16 ~~drug and alcohol test before January 1, 2017.~~

17 ~~(3)~~

18 (2) With respect to subparagraphs (B) and (F) of paragraph (1),
19 the commission may base a finding on a certification by the
20 commission that an applicant has filed, with the commission, a
21 sworn declaration of ability to comply and intent to comply.

22 ~~(4)~~

23 (3) The commission may require, as a precondition to the
24 issuance of a permit or certificate, the procurement of a
25 performance bond sufficient to facilitate the collection of fines,
26 penalties, and restitution related to enforcement actions that can
27 be taken against the applicant.

28 (b) In addition to the requirements in subdivision (a),
29 charter-party carriers shall meet all other state and, where
30 applicable, federal regulations as prescribed.

31 (c) The commission may delegate to its executive director or
32 that executive director's designee the authority to issue, renew, or
33 authorize the transfer of, charter-party carrier permits or certificates
34 and to make the findings specified in subdivision (a) that are
35 necessary to that delegated authority.

36 SEC. 2. Section 5444 is added to the Public Utilities Code, to
37 read:

38 5444. (a) A transportation network company shall do all of
39 the following:

1 (1) Participate in a pull-notice system pursuant to Section 1808.1
2 of the Vehicle Code to regularly check the driving records of all
3 participating drivers.

4 (2) Provide for a mandatory controlled substance and alcohol
5 testing certification program as adopted by the commission
6 pursuant to Section 1032.1.

7 ~~(3) Provide for mandatory Department of Justice criminal~~
8 ~~background checks to check the criminal history of any~~
9 ~~participating driver who is either under contract to, or employed~~
10 ~~by, the transportation network company to operate a vehicle used~~
11 ~~in transportation for compensation pursuant to the following:~~

12 ~~(A) A driver shall submit to the Department of Justice fingerprint~~
13 ~~images and related information required by the department for the~~
14 ~~purpose of obtaining information as to the existence and content~~
15 ~~of state convictions and state arrests and also information as to the~~
16 ~~existence and content of a record of a state arrest for which the~~
17 ~~department establishes that the person is free on bail or on his or~~
18 ~~her own recognizance pending trial or appeal.~~

19 ~~(B) The department shall provide a state response to the~~
20 ~~transportation network company pursuant to paragraph (1) of~~
21 ~~subdivision (p) of Section 11105 of the Penal Code.~~

22 ~~(C) The transportation network company shall request from the~~
23 ~~Department of Justice subsequent notification service, as provided~~
24 ~~pursuant to Section 11105.2 of the Penal Code, for persons~~
25 ~~described in subparagraph (A).~~

26 ~~(D) The department shall charge a fee sufficient to cover the~~
27 ~~cost of processing the request described in this paragraph.~~

28 ~~(E) A driver shall be denied employment or have his or her~~
29 ~~contract voided if he or she is required by any law to register as a~~
30 ~~sex offender or has been convicted of any felony, within a~~
31 ~~seven-year period from the date of his or her application, involving~~
32 ~~any of the following: any type of sexual offense; the manufacture,~~
33 ~~possession for sale, transportation, or distribution of narcotics,~~
34 ~~controlled substances, or addictive or dangerous drugs; force,~~
35 ~~violence, threat, or intimidation against persons; kidnapping;~~
36 ~~forgery, fraud, larceny, extortion, burglary, robbery, or theft; credit~~
37 ~~card fraud; possession of a firearm or dangerous weapon; resisting~~
38 ~~or obstructing a peace officer, public officer, or emergency medical~~
39 ~~technician; or use of another vehicle for hire in the commission of~~
40 ~~a felony. Equivalent out-of-state violations shall be considered.~~

1 ~~(4)~~

2 (3) Register any vehicle used in the transportation of passengers
3 for compensation with the commission and display on the vehicle
4 a suitable decal with an identifying symbol issued by the
5 commission.

6 (b) Drivers hired or initially retained by a transportation network
7 company on or after January 1, 2016, shall be subject to
8 ~~background checks and~~ mandatory drug and alcohol testing prior
9 to employment or retention. Drivers hired or initially retained
10 before January 1, 2016, shall complete a ~~background check and~~
11 drug and alcohol test before January 1, 2017.

12 SEC. 3. Section 1808.1 of the Vehicle Code is amended to
13 read:

14 1808.1. (a) The prospective employer of a driver who drives
15 a vehicle specified in subdivision (k) shall obtain a report showing
16 the driver's current public record as recorded by the department.
17 For purposes of this subdivision, a report is current if it was issued
18 less than 30 days prior to the date the employer employs the driver.
19 The report shall be reviewed, signed, and dated by the employer
20 and maintained at the employer's place of business until receipt
21 of the pull-notice system report pursuant to subdivisions (b) and
22 (c). These reports shall be presented upon request to an authorized
23 representative of the Department of the California Highway Patrol
24 during regular business hours.

25 (b) The employer of a driver who drives a vehicle specified in
26 subdivision (k) shall participate in a pull-notice system, which is
27 a process for the purpose of providing the employer with a report
28 showing the driver's current public record as recorded by the
29 department, and any subsequent convictions, failures to appear,
30 accidents, driver's license suspensions, driver's license revocations,
31 or any other actions taken against the driving privilege or
32 certificate, added to the driver's record while the employer's
33 notification request remains valid and uncanceled. As used in this
34 section, participation in the pull-notice system means obtaining a
35 requester code and enrolling all employed drivers who drive a
36 vehicle specified in subdivision (k) under that requester code.

37 (c) The employer of a driver of a vehicle specified in subdivision
38 (k) shall, additionally, obtain a periodic report from the department
39 at least every 12 months. The employer shall verify that each
40 employee's driver's license has not been suspended or revoked,

1 the employee's traffic violation point count, and whether the
2 employee has been convicted of a violation of Section 23152 or
3 23153. The report shall be signed and dated by the employer and
4 maintained at the employer's principal place of business. The
5 report shall be presented upon demand to an authorized
6 representative of the Department of the California Highway Patrol
7 during regular business hours.

8 (d) Upon the termination of a driver's employment, the employer
9 shall notify the department to discontinue the driver's enrollment
10 in the pull-notice system.

11 (e) For the purposes of the pull-notice system and periodic report
12 process required by subdivisions (b) and (c), an owner, other than
13 an owner-operator as defined in Section 34624, and an employer
14 who drives a vehicle described in subdivision (k) shall be enrolled
15 as if he or she were an employee. A family member and a volunteer
16 driver who drives a vehicle described in subdivision (k) shall also
17 be enrolled as if he or she were an employee.

18 (f) An employer who, after receiving a driving record pursuant
19 to this section, employs or continues to employ as a driver a person
20 against whom a disqualifying action has been taken regarding his
21 or her driving privilege or required driver's certificate, is guilty of
22 a public offense, and upon conviction thereof, shall be punished
23 by confinement in a county jail for not more than six months, by
24 a fine of not more than one thousand dollars (\$1,000), or by both
25 that confinement and fine.

26 (g) As part of its inspection of bus maintenance facilities and
27 terminals required at least once every 13 months pursuant to
28 subdivision (c) of Section 34501, the Department of the California
29 Highway Patrol shall determine whether each transit operator, as
30 defined in Section 99210 of the Public Utilities Code, is then in
31 compliance with this section and Section 12804.6, and shall certify
32 each operator found to be in compliance. Funds shall not be
33 allocated pursuant to Chapter 4 (commencing with Section 99200)
34 of Part 11 of Division 10 of the Public Utilities Code to a transit
35 operator that the Department of the California Highway Patrol has
36 not certified pursuant to this section.

37 (h) (1) A request to participate in the pull-notice system
38 established by this section shall be accompanied by a fee
39 determined by the department to be sufficient to defray the entire
40 actual cost to the department for the notification service. For the

1 receipt of subsequent reports, the employer shall also be charged
2 a fee established by the department pursuant to Section 1811. An
3 employer who qualifies pursuant to Section 1812 shall be exempt
4 from any fee required pursuant to this section. Failure to pay the
5 fee shall result in automatic cancellation of the employer's
6 participation in the notification services.

7 (2) A regularly organized fire department, having official
8 recognition of the city, county, city and county, or district in which
9 the department is located, shall participate in the pull-notice
10 program and shall not be subject to the fee established pursuant
11 to this subdivision.

12 (3) The Board of Pilot Commissioners for Monterey Bay and
13 the Bays of San Francisco, San Pablo, and Suisun, and its port
14 agent shall participate in the pull-notice system established by this
15 section, subject to Section 1178.5 of the Harbors and Navigation
16 Code, and shall not be subject to the fees established pursuant to
17 this subdivision.

18 (i) The department, as soon as feasible, may establish an
19 automatic procedure to provide the periodic reports to an employer
20 by mail or via an electronic delivery method, as required by
21 subdivision (c), on a regular basis without the need for individual
22 requests.

23 (j) (1) The employer of a driver who is employed as a casual
24 driver is not required to enter that driver's name in the pull-notice
25 system, as otherwise required by subdivision (a). However, the
26 employer of a casual driver shall be in possession of a report of
27 the driver's current public record as recorded by the department,
28 prior to allowing a casual driver to drive a vehicle specified in
29 subdivision (k). A report is current if it was issued less than six
30 months prior to the date the employer employs the driver.

31 (2) For the purposes of this subdivision, a driver is employed
32 as a casual driver when the employer has employed the driver less
33 than 30 days during the preceding six months. "Casual driver"
34 does not include a driver who operates a vehicle that requires a
35 passenger transportation endorsement.

36 (k) This section applies to a vehicle for the operation of which
37 the driver is required to have a class A or class B driver's license,
38 a class C license with a hazardous materials endorsement, a class
39 C license issued pursuant to Section 12814.7, or a certificate issued
40 pursuant to Section 12517, 12519, 12520, 12523, 12523.5, or

1 12527, or a passenger vehicle having a seating capacity of not
2 more than 10 persons, including the driver, operated for
3 compensation by a charter-party carrier of passengers,
4 transportation network company, or passenger stage corporation
5 pursuant to a certificate of public convenience and necessity or a
6 permit issued by the Public Utilities Commission.

7 (l) (1) For purposes of this section, the term “employer” or
8 “prospective employer” includes a transportation network company
9 whose permit or certificate, including any renewal of that permit
10 or certificate, is subject to the requirements of Article 7
11 (commencing with Section 5430) of Chapter 8 of Division 2 of
12 the Public Utilities Code.

13 (2) This section shall not be construed to change the definition
14 of “employer,” “employee,” or “independent contractor” for any
15 other purpose.

16 (m) A motor carrier who contracts with a person to drive a
17 vehicle described in subdivision (k) that is owned by, or leased to,
18 that motor carrier, shall be subject to subdivisions (a), (b), (c), (d),
19 (f), (j), (k), and (l) and the employer obligations in those
20 subdivisions.

21 (n) Reports issued pursuant to this section, but only those for a
22 driver of a taxicab engaged in transportation services as described
23 in subdivision (a) of Section 53075.5 of the Government Code,
24 shall be presented upon request, during regular business hours, to
25 an authorized representative of the administrative agency
26 responsible for issuing permits to taxicab transportation services
27 pursuant to Section 53075.5 of the Government Code.

28 SEC. 4. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

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